Cri Appeal 712 /96

(2)

C/188/(Jail)
P.P.R.—5,000-9-81

CF0000061207

Division Bench (Criminal)

APPEAL OF PRISONER

No. 918 Name दयालराम

Father's name जंगलीराम

Residence रैकवार Age 25वर्ष

Sentenced to आजन्म कारावास on 9/12/96

Under section 302/IPC by जिला एवं सत्र न्यायाधीश अम्बिकापुर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

High Court of Madhya Pradesh
JABALPUR
15 APR 1996
Reg. No. 411
Receipt Clerk
High Court, Jabalpur

1 Date of Application for copy of Judgement

2 Date of which copy received 9/2/96

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not – Yes No

No. Name दयालराम

Continued in अम्बिकापुर Jail

No. 396 dated 9/2/96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

सलग्न निर्णय प्रति 4 पन्ने

Superintendent-Central/Dist./Sub-Jail

जिला जेल अधिकारी (सजा बंदी)

Date of receipt in C. J. M.'S Office 9/2/96

Date of receipt of record to accompany 29/3/96

Memo of Appeal of the Appeliate Court: माननीय उच्च न्यायालय सरगुजा संभाग

No. 0 Dated 28/3/96 198

Forwarded to the माननीय उच्च न्यायालय सरगुजा संभाग

C.J.Magistrate 29/3/96
(सी० एल० पहेलो)
मुख्य न्यायिक मजिस्ट्रेट
अम्बिकापुर, जिला सरगुजा (म०प्र०)

Date of receipt in Appliate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(11)

आदेश पत्रक

मामला क्रमांक Cr A-712/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 712 of 1996

Appellant : Dayalram

Vs.

Respondent : State of Madhya Pradesh

Smt. Usha Chandrakar, learned counsel for the appellant.
Shri Akhil Mishra, learned P.L. for the respondent/State.

ORAL JUDGMENT
(06.03.2006)

Per Dhirendra Mishra, J

The appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure against the impugned judgment of conviction and order of sentence dated 08.12.1996 passed by Sessions Judge, Ambikapur, Surguja in S.T.No. 69/95 whereby the learned Sessions Judge after holding the accused/appellant guilty of causing homicidal death of his father Jangliram convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

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आदेश पत्रक

मामला क्रमांक Cr. A 712/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Case of the prosecution, in brief, is that appellant is the son of deceased Jangliram. Neighbour Mangalram PW-2 lodged the First Information Report (P-1) on 16.11.1994 at about 12.15 in the afternoon mentioning therein that deceased Jangliram had two sons namely Dhanmasi and Dayal and deceased Jangli lived with Dhanmasi and Dayal was living separately since last three years. The land fell in the share of Jangli was cultivated by Dhanmasi and Dayal was claiming ½ share over it. Yesterday i.e. 15.11.1994 they prepared *hadia* liquor and consumed the same in the second half. In the night when Jangli was warming himself by fire and the wife of Dhanmasi was also there, at about 9.00 p.m. Dayal came out of his house and went near Jangli, picked up a tumbler lying nearby and assaulted Jangli three four times. Hearing the shouts of wife of Dhanmasi, Dhanmasi also came there and by that time Dayal left the place of occurrence. After half an hour of the incident Jangli died. There was profuse bleeding from the forehead of Jangli. They searched for Dayal and thereafter went to lodge the report on the following day i.e. 16.11.1994. After registering the offence police conducted investigation. During investigation the investigating officer performed inquest over the dead body of Jangli and prepared inquest report (P-7) after due notice to the Panchas. The dead body was sent for autopsy to Govt. Hospital, Ambikapur. Dr. M.K.Jain (PW-4) conducted postmortem and submitted his report (P-5) in which he noticed

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depressed fracture of nose and depressed fracture of left part of zygomatic bone near the depressed fracture of the head. He also found a circular torn injury near the left eye along with broken pieces of bone of head which was so badly broken that at the time of investigation it could accommodate one finger easily. He has also found another lacerated wound beside the first injury over the head and third wound was near the left ear and the ear of the deceased was also partially cut. Blood was clotted in both the nostrils and blood was also accumulated in both the eyes. On dissection he found fracture over zygomatic bone, nose bone and frontal bone of the head and the head was found pale. He opined that cause of death was due to injury over the head and vital organs of brain resulting in excessive bleeding. Duration of the death was from 24 to 48 hours from the time of examination. All the injuries were ante-mortem and grievous in nature and the death of Jangliram was homicidal. After completion of the investigation charge sheet under Section 302 of the IPC was filed in the Court of Chief Judicial Magistrate, Ambikapur who in turn committed the case to the Court of Sessions Judge, Ambikpaur for trial.

3. Learned Sessions Judge framed the charge under Section 302 of the IPC. The accused abjured his guilt. The prosecution in order to establish the charge against the accused/appellant examined six witnesses in all. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he

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denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication on the basis of suspicion.

4. Homicidal death of Jangliram is not in dispute. Even otherwise considering the statement of PW-4 Dr. Jain who conducted postmortem over the dead body of the deceased and found various injuries which have been described in detail in the foregoing paragraph, the homicidal death of deceased Jangliram is established.

5. Now the only question to be decided in this appeal is – whether the prosecution has been able to establish the involvement of the accused/appellant in the commission of the above offence?

6. Learned counsel for the accused/appellant submits that it is a case of false implication as the incident took place at about 9.30 p.m. on 15.11.1994, however, the report was lodged by the neighbour Mangalram PW-2 who is not an eyewitness to the incident, on the following day at about 12.15 p.m. and there is no explanation for the delay. It is further contended that PW-2 Mangalram who has lodged the FIR has not supported the prosecution case and as such the FIR has not been proved. It is argued that though PW-1 Sukhvaro Bai claims to be an eyewitness to the incident but she did not lodge the report in the police station which creates suspicion about her presence at the

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place of incident. It is also argued that both the witnesses PW-1 Sukhwaro Bai and PW-3 Dhanmasi are husband and wife and they have a motive to falsely implicate the accused/appellant in the instant case as they in fact intend to disinherit the appellant from the estate of the deceased and therefore the statement of PW-1 Sukhvaro Bai that she saw the incident should not be believed.

7. On the other hand, learned counsel for the State supports the impugned judgment of the trial Court.

8. We have heard learned counsel for the respective parties and perused the material available on record.

9. To establish the involvement of the accused/appellant in the crime in question the prosecution has relied upon the statement of PW-1 Sukhwaro Bai who is daughter-in-law of the deceased and wife of elder brother of the appellant. This witness has stated that on the date of incident which was a festival day, at that time she was in her home with her father-in-law Jangliram, her *Dewar* (brother-in-law) Dayal pushed Jangli and thereafter assaulted him with tumbler. However, she could not recollect as to how many blows accused gave to Jangli. Jangli received injuries over both sides of his forehead and both the cheeks. Thereafter, the accused ran away from that place. After receiving the injuries Jangli fell down and after some time he

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died. She has stated that she does not know as to why accused assaulted Jangli, however, she has stated that her father-in-law used to say that he will be taking ½ share of the land and remaining ½ share he will be distributing between two brothers but she does not know that because of this reason or other the accused assaulted the deceased. She has further stated that when the accused assaulted Jangli there was no one to see the incident and her husband and Mangalsai came after the incident and father of Mangal had also come there to whom she narrated the incident and thereafter Mangal Sai and Indal Sai went to lodge the report. In the cross examination a suggestion was put to her on behalf of the accused/appellant that in fact the husband of this witness assaulted her father-in-law, which was denied by this witness. The suggestion that the accused has been falsely implicated in the above offence so that he may not be given his share, has also been denied. PW-2 Mangal Sai who is the complainant has lodged the report. He has stated that elder brother of accused Dhanmasi came to his house and informed that the accused has killed his father and ran away whereupon they went to the place of occurrence and saw that Jangli - father of Dhanmasi was lying dead in the verandah. However, he has stated that Dhanmasi did not inform him in the night as to with which weapon the accused assaulted his father, therefore, he was declared hostile and confronted with the FIR wherein he had named the appellant as assailant.

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10. PW-3 Dhanmasi who is the brother of the appellant, son of the deceased and husband of PW-2 Sukhvaro Bai, has stated that at the time of incident he had gone to his field to supervise his paddy. After hearing the noise of weeping, he came back and his wife informed that the accused assaulted his father by tumbler as a result of which he has fallen unconscious. He found his father lying in the verandah and thereafter called Mangalram, however, by that time the accused had already fled from the scene of occurrence. In the cross-examination he has denied the suggestion that his wife did not tell him the name of the assailant.

11. From perusal of the statement of PW-1 Sukhvaro Bai who is the eyewitness to the incident and PW-3 Dhanmasi, it is established that PW-1 has seen the appellant assaulting the deceased with tumbler as a result of which deceased fell on the ground and succumbed to the injuries sustained by him. The statement of PW-1 is duly corroborated in material particulars by the statement of PW-3 Dhanmasi to whom she narrated the whole incident immediately after the incident. The evidence of PW-1 is further corroborated by the statement of PW-4 Dr. M.K.Jain, who conducted postmortem on the body of deceased Jangliram and found three lacerated wound over his head. The defence has not been able to elicit anything in the cross-examination of the above witnesses to make their statements untrustworthy or unreliable. The defence of the appellant that in fact his own

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brother PW-3 Dhanmasi has assaulted the deceased, does not reflect from the statement of the accused himself wherein he has not taken such defence.

12. In the light of the aforesaid discussions, we are of the considered opinion that the prosecution has been able to establish the involvement of the accused/appellant in the commission of the above offence.

13. Learned counsel for the appellant submits that even if it is assumed that the appellant gave the blow over the head of the deceased, even then the offence does not travel beyond section 304-I or II of the IPC as from perusal of the evidence available on record it is evident that the incident took place on the spur of moment, on a sudden quarrel and the appellant picked up a tumbler from the nearby place and gave three four blows over the head of his father and therefore, the intention to cause death of his father Jangliram cannot be attributed to the appellant. She further submits that though the knowledge that the injury which the appellant was causing to the deceased, may cause his death, can be attribute to the appellant and as such the offence against the appellant does not travel beyond section 304-I or II of the IPC.

14. Taking into consideration the manner in which the alleged offence has been committed and further considering the fact

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that the accused suddenly picked up a tumbler lying nearby and assaulted the deceased with it on his head, we are of the opinion that intention to cause death of the deceased cannot be attributed to the appellant and the offence against the appellant does not travel beyond section 304-II of the IPC and the Court below was not justified in holding the accused/appellant guilty under section 302 of the IPC and sentencing him accordingly.

15. In the result, the appeal partly succeeds. Conviction and sentence awarded under section 302 of the IPC by the trial Court are set aside and instead the appellant is convicted under section 304-II of the IPC and sentenced to undergo imprisonment for ten years.

16. Learned counsel for the accused/appellant submits that the appellant is in jail since 06.12.1994 and as such he has already completed more than 10 years' jail sentence which is not disputed by learned counsel for the State.

17. In view of the above, the accused/appellant is directed to be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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